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Opinion on remand from Supreme Court

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. RINGO LAWRENCE, Defendant and Appellant.	B193831 (Los Angeles County Super. Ct. No. BA284590)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark V. Mooney, Judge. Affirmed.

Heather J. Manolakas, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Lawrence M. Daniels and Lauren E. Dana, Deputy Attorneys General, for Plaintiff and Respondent.

In our initial decision in this case (*People v. Lawrence* (Jan. 2, 2008, B193831) [superseded by grant of review Apr. 9, 2008, S160736] (*Lawrence I*)), we held Ringo Lawrence had knowingly and voluntarily waived his Sixth Amendment right to counsel under *Faretta v. California* (1975) 422 U.S. 806 [95 S.Ct. 2525, 45 L.Ed.2d 562] (*Faretta*), but the trial court had abused its discretion when it denied Lawrence's two subsequent requests to withdraw that waiver and reassert his right to counsel. We also held the error was structural because it had "the same deleterious effect as other deprivations of the right to counsel consistently found by the United States Supreme Court to be structural error" and reversed the judgment of conviction. Considering only our holding regarding Lawrence's requests to withdraw his *Faretta* waiver, the Supreme Court reversed the judgment of this court (*People v. Lawrence* (2009) 46 Cal.4th 186 (*Lawrence II*),[1] holding the trial court had not abused its discretion in part because Lawrence's first request to withdraw his waiver was not unequivocal and the second request, made after the jury had been sworn, may have resulted in significant disruption or untoward delay in the trial that included Lawrence's codefendant Patricia Broomfield. (*Id*. at pp. 194-195.) We now address several issues raised by Lawrence in his appeal to this court that we did not need to reach in *Lawrence I*.[2]

CONTENTIONS

Lawrence contends the trial court committed reversible error when it refused to appoint advisory counsel to assist him while representing himself, to continue the trial and order that he be given access to the law library and to delay the sentencing hearing

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[1] Because the Supreme Court did not address Lawrence's challenge to his original *Faretta* waiver, our decision in *Lawrence I* upholding the validity of the waiver remains determinative on that issue. (See *Agricultural Labor Relations Bd. v. Tex-Cal Land Management, Inc.* (1987) 43 Cal.3d 696, 709, fn. 12.)

[2] Because the factual and procedural background of the case was set forth in detail in our first decision, we include in our discussion of the remaining issues only facts essential to resolution of those claims.

until after taking evidence on Lawrence's prior convictions to permit his newly retained private counsel to be present.

DISCUSSION

1. *The Trial Court Did Not Abuse Its Discretion When It Refused To Appoint Advisory Counsel To Assist Lawrence in the Presentation of His Defense*

California courts have discretion to appoint "standby" or "advisory" counsel in cases in which an indigent defendant chooses self-representation. (See *People v. Bigelow* (1984) 37 Cal.3d 731, 742-744.) "'Standby counsel' is an attorney appointed for the benefit of the court whose responsibility is to step in and represent the defendant if that should become necessary because, for example, the defendant's in propria persona status is revoked. [Citations.] 'Advisory counsel' by contrast, is appointed to assist the self-represented defendant if and when the defendant requests help." (*People v. Blair* (2005) 36 Cal.4th 686, 725.)

"'While the Sixth Amendment guarantees both the right to self-representation and the right to representation by counsel . . . a defendant who elects self-representation "does not have a constitutional right to choreograph special appearances by counsel" [citation]. Thus none of the "hybrid" forms of representation, whether labeled "cocounsel," "advisory counsel," or "standby counsel," is in any sense constitutionally guaranteed.'" (*People v. Blair, supra,* 36 Cal.4th at p. 723; see *People v. Clark* (1992) 3 Cal.4th 41, 111 ["defendant who elects to represent himself has no constitutional right to advisory counsel"]; *People v. Hamilton* (1989) 48 Cal.3d 1142, 1162 ["A criminal accused has only two constitutional rights with respect to his legal representation, and they are mutually exclusive. He may choose to be represented by professional counsel, or he may knowingly and intelligently elect to assume his own representation."].)

A defendant seeking appointment of advisory counsel "must make a showing of need and the decision to grant or deny the request rests in the sound discretion of the trial court." (*People v. Crandell* (1988) 46 Cal.3d 833, 862, disapproved on other grounds in *People v. Crayton* (2002) 28 Cal.4th 346, 364-365.) If "'there exists "a reasonable or even fairly debatable justification, under the law, for the action taken, such action will not

be here set aside . . . .'"" (*Crandell*, at p. 863.) However, a trial court's failure to exercise its discretion is "in itself serious error." (*People v. Bigelow*, *supra*, 37 Cal.3d at p. 743 ["[m]istakenly believing it had no authority to appoint advisory counsel, the trial court failed to exercise its discretion"]; *Crandell*, at p. 862 ["[n]one of the judges who considered [defendant's requests] expressly acknowledged the existence of discretion to appoint advisory counsel for defendant, and there is no evidence that any judge engaged in a reasoned exercise of judgment based on an examination of the particular circumstances of this case"].)

Lawrence contends the trial court summarily denied his request for advisory counsel without appearing to understand it had the discretion to appoint advisory counsel or considering the merits of the request. Lawrence, however, made no such request. Rather, Joseph Walsh, counsel for Lawrence's codefendant Broomfield, made the request in an effort to alleviate the responsibility he felt to answer Lawrence's questions about the proceedings after the court declined to permit Lawrence to withdraw his *Faretta* waiver:

"Mr. Walsh: . . . Once the trial started, Mr. Lawrence was unfamiliar with the proceedings, so out of courtesy I was answering his questions essentially. And I recall in Department 100 this morning Judge Wesley ordered that he be provided with an advisory stand-by counsel.

"The Court: Stand-by counsel, not advisory counsel. And counsel did check in if there was a need for him and was on call. Another counsel will be on call, but there is a difference between stand-by counsel and advisory counsel. This minute order reflects he was appointed stand-by counsel.

"Mr. Walsh: And just informal conversations with Mr. Lawrence he has a request now that he wishes the court—I think he wants to withdraw his pro. per. status.

"[Lawrence]: The only reason is cross-examination. People are saying something and I am not for sure able to, you know.

"The Court: Mr. Lawrence, I think you were advised of all of these problems. I see here that you filled out a pro. per. waiver form setting forth all of these things about

your understanding and what you would be up against and you made a decision. We will see if we can contact your counsel.

"Mr. Walsh: The counsel that was relieved is engaged in I believe an attempted murder trial and he will be for two weeks. My concern is that it's obvious Mr. Lawrence does have questions during the proceedings and out of a courtesy I would like to answer his questions, but I have my own client to worry about and so—

"The Court: You are under no obligations to answer his questions.

"Mr. Walsh: Out of courtesy as a fellow human being I would answer his questions, so my request should be is that perhaps he get some advisory counsel so he can answer questions and that way I won't have to be constantly communicating with him and I can concentrate more on my own client's case.

"The Court: Mr. Lawrence, you can't be bothering Mr. Walsh during the trial.

"Mr. Walsh: I didn't ask the court to do that. I do that out of courtesy, but I—

"The Court: I am telling him he can't be disrupting you while you are trying to do your job. . . .

"Mr. Walsh: And his request for advisory counsel is denied?

"The Court: Advisory counsel is denied."

On this record the trial court did not abuse its discretion in declining to appoint advisory counsel for Lawrence. To the extent Lawrence has not forfeited the argument because it was Walsh who made the request (see *People v. Michaels* (2002) 28 Cal.4th 486, 511 [issues or theories not properly raised in the trial court will not be considered on appeal]; *People v. Kipp* (2001) 26 Cal.4th 1100, 1130), Lawrence failed to make any showing of need (*People v. Crandell*, *supra*, 46 Cal.3d at p. 862). Walsh's request for advisory counsel to assist Lawrence was clearly made to alleviate the burden Walsh felt to answer Lawrence's questions out of an admirable sense of professionalism. Lawrence himself never expressed a need or desire for advisory counsel; he merely explained he may have been having difficulties with cross-examination, a statement the *Lawrence II* Court found ambiguous. (*Lawrence II*, *supra*, 46 Cal.4th at p. 193 ["As appellate counsel acknowledged at oral argument in this court, defendant's remark was ambiguous. It may

have meant, 'The only reason I am now requesting reappointment of counsel is cross-examination,' or it may have meant, 'The only reason I was asking Mr. Walsh what to do, and am entertaining the idea of having counsel reappointed, is cross-examination.'"].)

Moreover, as the *Lawrence II* Court stated with respect to its conclusion the foregoing colloquy did not constitute an unequivocal request to withdraw Lawrence's *Faretta* waiver, "The trial court was faced with a defendant ambivalent about his in propria persona status, who earlier the same morning had executed a valid waiver of counsel, insisting he had 'no choice' but to dismiss Cohen because he 'ain't doing nothing.' The [trial] court was not required, simply because defendant indicated he was having trouble cross-examining prospective jurors, to suspend jury selection and other trial proceedings until it could be determined whether defendant truly wanted to revoke his waiver of counsel, whether he was willing to accept [his prior appointed counsel] again, or whether another attorney could be located, and when either attorney could begin trial. . . . [Lawrence], if he did not want to proceed without counsel, should have made an express request to revoke his waiver and pressed for a final ruling at some point during jury selection." (*Lawrence II*, *supra*, 46 Cal.4th at pp. 193-194.) Similarly, we will not transform the colloquy into an unequivocal request supported by a demonstrated need for advisory counsel.

Finally, this case is distinguishable from *People v. Bigelow*, *supra*, 37 Cal.3d 731 and *People v. Crandell*, *supra*, 46 Cal.3d 833 in which it was clear the judges considering requests for advisory counsel either did not believe the law permitted appointment or under no circumstances would ever appoint advisory counsel. The record here does not reflect such a misapprehension. The court demonstrated it understood the difference between advisory counsel and standby counsel and quickly determined Walsh's request did not warrant appointment of advisory counsel for Lawrence. A swift ruling in and of itself does not demonstrate the trial court failed to appreciate it had discretion or failed to exercise its judgment in a reasoned manner based on an examination of the particular circumstances of this case. (See *People v. Jacobo* (1991) 230 Cal.App.3d 1416, 1430 ["'"[i]t is a basic presumption indulged in by reviewing courts that the trial court is

presumed to have known and applied the correct statutory and case law in the exercise of its official duties"""]; cf. *People v. Gillispie* (1997) 60 Cal.App.4th 429, 434 [where no affirmative error in exercising discretion to dismiss a strike appears on the record, court is presumed to have correctly applied the law].)

2. *The Trial Court Did Not Abuse Its Discretion When It Failed To Order That Lawrence Be Given Access to the Law Library*

The right to counsel under the federal and state Constitutions includes the right to effective counsel and thus also includes the right to reasonably necessary ancillary defense services. (*Corenevsky v. Superior Court* (1984) 36 Cal.3d 307, 319.) A defendant who is representing himself "'may not be placed in the position of presenting a defense without access to a telephone, law library, runner, investigator, advisory counsel, or any other means of developing a defense.'" (*People v. Blair*, *supra*, 36 Cal.4th at p. 733.) However, "the Sixth Amendment requires only that a self-represented defendant's access to the resources necessary to present a defense be reasonable under all the circumstances." (*Ibid*.) Access to a law library is a privilege and not a right. "Access to a law library, by defendants freely choosing to represent themselves at trial, is not compelled by any constitutional, statutory or common law mandate. While access by such defendants may not arbitrarily be denied, nor, once conferred, terminated or restricted [citation], there is no requirement that such defendants be afforded specific books or access at specific times or on specific days." (*People v. Davis* (1987) 189 Cal.App.3d 1177, 1196, disapproved on other grounds in *People v. Snow* (1987) 44 Cal.3d 216, 225-226.) A trial court's ruling on a motion for defense services is reviewed for an abuse of discretion. (*Corenevsky*, at p. 321.)

Lawrence contends he informed the trial court he had been denied access to the law library and the court's failure to continue the trial and order he have access was reversible error. Lawrence, however, never informed the court he had been *denied* access to the library; he merely stated, without explanation, he had not been to the library as partial justification for his request to withdraw his *Faretta* waiver:

"The Court: . . . Just as our jurors were walking in, Mr. Lawrence had made the request to have an attorney appointed to represent him in this matter. And, Mr. Lawrence, I will give you a chance to be heard on that request.

"[Lawrence]: Yes, your Honor. I talked to my wife this weekend and she said I shouldn't be doing something. And it doesn't matter to me, but she figured I might get a public defender or state appointed attorney or someone.

"The Court: Well, Mr. Lawrence, the court –

"[Lawrence]: I haven't been to the law library or nothing either.

"The Court: The court has considered your request and I am going to deny your request at this time. This was something you were warned about when you got yourself into this about you would be at a disadvantage choosing to represent yourself in this matter.

"I also consider the fact that, you know, the jury has been selected in this matter, that you also have a codefendant. And it would be disruptive to her case as well to have someone come in. Your previous attorney, Mr. Cohen, as I understand, is still engaged in trial and not available, so far all of those reasons I am going to deny your request.

"And I also note when you filled out this form you were specifically advised and you initialed here on Paragraph H if you ask to give up your pro. per. status the court may deny the request and have you proceed to trial without an attorney and that is where we are now, Sir."

Lawrence contends that, to the extent it was unclear whether he had been denied access or just failed to go the law library, the court, knowing that Lawrence had difficulty expressing himself, should have asked for clarification. Lawrence, however, was expressly warned in the *Faretta* waiver he signed, "I understand that I cannot and will not receive any help or special treatment from the Court." (This warning is set forth as a single sentence separate from other admonishments, and Lawrence placed his initials in a box following it indicating his assent.) Lawrence cannot now be heard to complain about not receiving the assistance he was warned he would not receive. (See *People v. Barnum* (2003) 29 Cal.4th 1210, 1225 ["'[A] defendant who knowingly and intelligently elects to

proceed *pro se,* "cannot expect the trial judge to relinquish his [or her] role as impartial arbiter in exchange for the dual capacity of judge and guardian angel of defendant." . . . [A] defendant who chooses to proceed *pro se* "does so at his [or her] peril and acquires as a matter of right no greater privilege or latitude than would an attorney acting for him [or her]."'"']; *People v. Nauton* (1994) 29 Cal.App.4th 976, 981 ["Respect for the dignity and autonomy of the individual is a value universally celebrated in free societies and uniformly repressed in totalitarian and authoritarian societies. Out of fidelity to that value defendant's choice must be honored even if he opts foolishly to go to hell in a handbasket. At least, if the worst happens, he can descend to the netherworld with his head held high. It's called, 'Doing It My Way.'"].)

Moreover, to the extent the court understood Lawrence was complaining about denial of access, it did not abuse its discretion in failing to continue the trial at this stage after the court had given its opening jury instructions, Lawrence and the other parties' attorneys had made opening statements and the prosecution's first witness had begun his testimony. Indeed, when the trial court had granted Lawrence's request for self-representation a few days earlier, it "had indicated it was willing to give Lawrence two weeks to prepare himself for trial because it would have granted his counsel's request for a continuance. Lawrence declined the offer." (*Lawrence I*, *supra*, B193831 [at p. 4,] fn. 6.) Thus, Lawrence's suggestion he should have been provided a mid-trial continuance to go to the law library after he had declined the pretrial offer of two weeks to prepare is without merit.

3. *The Court Did Not Abuse Its Discretion in Delaying Lawrence's Sentencing Hearing Until After Taking Evidence on His Prior Convictions To Permit Newly Retained Private Counsel To Be Present*

After the jury found Lawrence guilty on October 7, 2005, the trial court scheduled a sentencing hearing for November 9, 2005. At the outset of the hearing Lawrence informed the court he had retained private counsel who would arrive later that morning and reminded the court he had moved for a continuance. The court did not respond, instead taking the parties' appearances. The court then asked Lawrence if he wanted to

admit his prior convictions as Broomfield was going to do. Lawrence responded, "I am not ready. I have counsel here at 10:30."

After taking Broomfield's admission the court informed Lawrence, "In the information there are a number of prior convictions that are alleged. And before we even proceed to the next step, either sentencing or motions for a new trial, whatever you choose to do, we have to complete this trial. And the final portion of completing that is the trial on your prior convictions. In other words, the People will have to prove that you in fact suffered these prior convictions. And we do have a person here who apparently they rolled your prints this morning and there will be some testimony comparing that to other documents I presume. And we can proceed from there or go ahead and admit them at this time, your prior convictions, but that is up to you, Sir. What do you want to do?" Although Lawrence initially responded he would admit the convictions, he changed his mind, stating, "Any way I can waive this? I am not ready. We are going over it and I am not even sure if I should be speaking on it." In response to the court's suggestion, "If you are not comfortable, we can take evidence," Lawrence responded, "I am not trying to make anything inconvenient, but I am not fully aware of what I am doing right now, so you all—I may be doing something that I shouldn't." The court then advised the parties it would take evidence as to identity only and put everything else over. Lawrence agreed to that suggestion.[3]

After a fingerprint identification expert testified the fingerprints she had taken from Lawrence that morning matched the fingerprints contained in the files from Lawrence's two prior convictions, the court took the issue of the priors under submission to "give [Lawrence] an opportunity to review anything further in that regard . . . ." The sentencing hearing was continued until December 12, 2005, again until January 10, 2006 and then again until July 14, 2006.

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3 Although the transcript indicates the prosecutor replied, "All right," read in context it is clear it was Lawrence who said this.

Lawrence now contends the trial court failed to exercise its discretion to consider whether he should be permitted to withdraw his *Faretta* waiver at the commencement of the sentencing hearing on November 9, 2005 and failed to rule on his motion for a continuance. The record demonstrates the trial court did in fact exercise its discretion by crafting a solution to Lawrence's request that balanced the need to minimize trial delay and inconvenience to witnesses (the fingerprint expert who was waiting to testify) with protection of Lawrence's interests notwithstanding the difficulty Lawrence was experiencing was precisely the risk Lawrence knowingly and voluntarily accepted when he chose self-representation. The court took evidence only on the issue whether Lawrence's fingerprints matched those on record in connection with his prior convictions and otherwise left the matter open for Lawrence's retained counsel to address if necessary.

Indeed, at the outset of the July 14, 2006 hearing, the court informed Lawrence's counsel, "The court had taken the court trial on the priors under submission because at the time we proceeded on the court trial in the priors, Mr. Lawrence was still representing himself but had indicated he wanted to retain counsel. So we took evidence but wanted to give counsel an opportunity, should they come in, to submit anything additional on the court trial, on the priors. Is there anything additional on the court trial, on the priors to take up at this times?" Counsel responded, "Not at this time, your Honor." Thus, even if the trial court had abused its discretion, given Lawrence's counsel was permitted an opportunity to challenge the establishment of Lawrence's identity in connection with his prior convictions, any such error was harmless whether prejudice is measured by the federal constitutional beyond-a-reasonable-doubt standard (*Chapman v. California* (1967) 386 U.S. 18, 24 [87 S.Ct. 824, 17 L.Ed.2d 705]) or under the state law reasonable probability standard (*People v. Watson* (1956) 46 Cal.2d 818, 836 [reversal not required unless "it is reasonably probable that a result more favorable to the appealing party would have been reached in absence of the error"]).

DISPOSITION

The judgment is affirmed.

PERLUSS, P. J.

We concur:

WOODS, J.

ZELON, J.